

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
APPELLATE DIVISION OF ST. CROIX**

<b>Rafael E. Perez-Davis,</b>	)	
Petitioner/Appellant,	)	<b>D.C. Civ. App. No. 1998/092</b>
	)	
v.	)	Re: T.C. Civ. No. 633/1997
	)	
<b>V.I. Board of Parole Chair,</b>	)	
<b>Chesley Roebuck; V.I. Attorney</b>	)	
<b>General, Julio A. Brady; Bureau of</b>	)	
<b>Corrections Director, Gerald Enos;</b>	)	
<b>Bureau of Corrections Warden, Ewin</b>	)	
<b>Harris; Bureau of Corrections</b>	)	
<b>Parole Release Coordinator, Rachel</b>	)	
<b>Ballentine,</b>	)	
Respondents/Appellees.	)	

On Appeal from the Territorial Court of the Virgin Islands

Considered: March 24, 2000

Filed: June 1, 2000

**BEFORE:** **RAYMOND L. FINCH**, Chief Judge of the District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **IVE A. SWAN**, Territorial Court Judge, Division of St. Thomas/St. John, Sitting by Designation.

**APPEARANCES:**

**Rafael E. Perez-Davis, Pro Se**  
St. Croix, U.S. Virgin Islands,

**Maureen Phelan Cormier, Esq.**  
St. Croix, U.S. Virgin Islands  
Attorney for Appellees.

**JUDGMENT OF THE COURT**

PER CURIAM

**THIS MATTER** is before the Court on a *pro se* appeal filed by Raphael E. Perez-Davis ("appellant") alleging that the reason for

denial of his application for parole was insufficient and violated his due process rights under the Fourteenth Amendment to the United States Constitution.<sup>1</sup> The issue presented is whether the trial court erred in dismissing appellant's petition for writ of mandamus on grounds that the permissive language of the Virgin Islands parole statute does not create a constitutionally protected right or entitlement to parole, and does not create the type of liberty interest which entitles him to a more definite statement of the reasons for the denial of his parole application.

Appellant pled guilty to second degree murder on June 17, 1981 and was sentenced to twenty-five years incarceration. Appellant appeared before the Virgin Islands Board of Parole ("Board") in 1997. In a letter to then Virgin Islands Attorney General, the Honorable Julio A. Brady, the Chairman of the Parole Board wrote in relevant part:

With respect to this inmate, the board denied his application for parole. **Parole was denied because to parole him at this time would depreciate the seriousness of the offense he committed.**

(Appendix at 12 (emphasis added).) Dissatisfied with this denial, and the reason provided, appellant filed a petition for writ of

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<sup>1</sup> The Fourteenth Amendment to the United States Constitution is applicable to the Virgin Islands through the section 3 of Revised Organic Act of 1954, 48 U.S.C. § 1561). The Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1994), *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 73-177 (1995 & Supp. 1997) (preceding V.I. CODE ANN. tit. 1) ["Revised Organic Act"].

mandamus in the Territorial Court. Appellant's petition sought to compel appellees to provide (in writing) a reason which satisfied minimum due process requirements for denial of parole. Appellees sought dismissal for failure to state a claim upon which relief could be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). The trial court granted appellees' motion to dismiss, and this appeal arose out of that dismissal.

It is well-established in this jurisdiction that the language of § 4601 is discretionary rather than mandatory, and does not invoke constitutional due process protections.<sup>2</sup> The Court, having duly considered the premises, hereby

**ORDERS THAT** the dismissal of appellant's petition for writ of mandamus pursuant to FED. R. CIV. P. 12(b)(6) is **AFFIRMED**.

**DATED** this 1 day of June 2000.

**A T T E S T:**  
**ORINN ARNOLD**  
**Clerk of the Court**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Deputy Clerk

**Copies to:**  
Judges of the Appellate Panel

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<sup>2</sup> See, e.g., *Lewis v. The Director of the Department of Corrections, Golden Grove Adult Correctional Facility*, No. 93-7643, slip. op. at 4 (3d Cir. 1994) (The Virgin Islands statute commits the decision to grant parole to the discretion of the Board of Parole.); *Baptiste v. Bureau of Corrections*, 18 V.I. 597, 599-600 (D.V.I. 1981) ("The scheme of the Virgin Islands Parole Statute, and the regulations implementing it, is that if certain requirements are met, parole *may* be granted. There is no mandate that it *be* granted.").

Judges of the Territorial Court  
Honorable Jeffrey L. Resnick  
Honorable Geoffrey W. Barnard  
Iver A. Stridiron, Attorney General, V.I. Dept. of Justice  
Pamela Tepper, Solicitor General  
Maureen Phelan Cormier, AAG  
Rafael E. Perez-Davis, *Pro Se*, (Golden Grove Correctional  
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